

CALIFORNIA GAMBLING CONTROL COMMISSION
INITIAL STATEMENT OF REASONS

CGCC-GCA-2011-01-R

HEARING DATE: **September 28, 2011**

**SUBJECT MATTER OF
PROPOSED REGULATIONS:** **Interim Gambling Licenses**

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18:
Section 12349**

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

These proposed regulations would implement legislation¹ that requires the California Gambling Control Commission (Commission) to establish regulations, by December 31, 2011, that would allow a gambling enterprise to continue to operate subsequent to the occurrence of specified events. Those events include the death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee. The proposed regulations would accomplish this through the establishment of an application process for the issuance of interim gambling licenses, including timelines, criteria and interim license conditions. The interim gambling license would allow gambling operations to continue while the Commission considers the regular gambling license application of the successor in interest to the owner-licensee.

This proposed action would establish Section 12349 in Article 2, Chapter 6, Division 18, Title 4 of the California Code of Regulations. The proposed regulations would provide as follows:

- Subsection (a) would provide definitions for the following words and terms that are unique to Section 12349:
 - (1) “Applicant” would mean a new owner of a gambling enterprise who makes application to the Commission for an interim gambling license.
 - (2) “Interim gambling license” would mean a license issued by the Commission which permits the interim operation of a gambling enterprise following a qualifying event, during which time the Commission processes and considers an application for a regular gambling license from a new owner.
 - (3) “New owner” would mean a person who is a receiver, trustee, beneficiary, executor, administrator, conservator, successor in interest, or security interest holder for a gambling

¹ Chapter 233, Statutes of 2009 (AB 293, Mendoza)

enterprise that becomes the owner of a gambling enterprise as a result of a qualifying event.

- (4) “Qualifying event” would mean an event, such as those specified in Business and Professions Code Section 19841, subdivision (s), which results in a change in the ownership of a gambling enterprise and prevents gambling operations from continuing because the new owner does not hold a valid gambling license. A qualifying event would not include a planned transaction, where a licensee has the authority to continue gambling operations, but the transaction requires prior Commission approval.

This definition would restrict the use of an interim gambling license to only those events which threaten to shutdown gambling operations because no person holds a gambling license. This regulation is necessary in order to prevent the interim license process from being used to avoid or subvert other actions by the Commission, such as disciplinary action against an owner-licensee. Further, this regulation will prevent the interim license process from being used for other business/financial transactions that are planned by the licensee and require *prior* approval from the Commission.²

- (5) “Regular gambling license” would mean a gambling license issued by the Commission pursuant to Section 12342.

The meaning of the above noted words and terms may not be consistent with the meaning of similar words or terms used in other existing regulations or may be unique to this section. Therefore, these definitions are necessary to insure that the proposed regulations are clear, concise and easy to understand.³

- Subsection (b) would allow gambling operations to continue following a qualifying event, provided that an owner or a licensed person affiliated with the gambling enterprise assumes control of the gambling operations, the Commission is notified of the qualifying event within 10 days, and the new owner submits a request for an interim gambling license, as specified. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn.

Pursuant to Business and Professions Code section 19841(s), this regulation allows a cardroom to continue operating following a qualifying event, provided that someone has control of the gambling operations and that the new owner applies for a gambling license. However, if any factor in the applicant’s background dictates that the Commission deny the interim license, gambling operations must cease if no other person holds an interim or regular gambling license that would allow continued operation. The Gambling Control Act (Act)⁴ and Penal Code prohibit gambling operations if no person holds a gambling license.⁵

² Business and Professions Code, sections 19801, subdivision (k), 19824, subdivision (c), 19900, 19901, 19902, 19903 and 19904

³ Government Code, section 11349.1, subdivision (a); California Code of Regulations, Title 1, Section 16, subsection (a)

⁴ Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.

⁵ Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j, subdivision (a), paragraph (1)

- Subsection (c) would establish the application process for an interim gambling license. The process includes a requirement that the new owner submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event. The 30-day application submission requirement could be extended by the Commission or the Executive Director if the new owner can demonstrate good cause. The length of any extension would be at the discretion of the Commission or Executive Director, based on the specific facts and circumstances of each request.

As a result of this regulation, the application process for both an interim and regular gambling license would start simultaneously. This would help to prevent a duplication of effort by the applicant and Commission or Bureau of Gambling Control (Bureau) staff. Except for details about the qualifying event, all of the information needed to consider an interim license application is already requested on a regular “Application for State Gambling License” form (CGCC – 030). This regulation would also help to expedite the regular license application process, as some of the work may have already been accomplished for the interim license.

By requiring that documents be produced which show that a qualifying event has occurred, this regulation will help to insure that the interim license process is not used for transactions that are planned by the licensee and require *prior* approval from the Commission.⁶

A qualifying event, such as in the death of an owner-licensee, may include circumstances that prevent a new owner from submitting a request for an interim license within the 30 day requirement. As a result, this regulation allows the Commission or the Executive Director to extend the time limit based on individual facts and circumstances.

- Subsection (d) would specify that a request for an interim gambling license is ancillary to, and concurrent with, an application for a regular gambling license. The interim license is only meant to allow gambling operations to continue while a more permanent solution is sought for a licensing problem. This regulation will insure that a regular license application is being processed during the term of the interim license.

This subsection would also set up various timelines for the interim license application process. It allows Commission staff 10 days to determine the completeness of a request for an interim gambling license. If the request is incomplete, this regulation allows the applicant another 10 days to send the additional documents or information. If the applicant fails to send the requested documents or information, the application would be considered abandoned. When a request is considered complete, the Commission would have 60 days to schedule and conduct a meeting to grant or deny the request for an interim license. The issuance of an interim license is a stopgap measure with some level of urgency involved. The multiple steps and multi-staff involvement of an interim license request dictates that

⁶ Business and Professions Code, sections 19801, subdivision (k), 19824, subdivision (c), 19900, 19901, 19902, 19903 and 19904

goals be established to insure timely processing. By listing these timelines in regulation, license applications are less apt to get bogged down during the various steps in the process.

This subsection would require that gambling operations be terminated if an application for an interim license is abandoned by the applicant and no other person has applied for or obtained an interim or regular gambling license. The Act and Penal Code prohibit gambling operations if no person holds a gambling license.⁷

This subsection would also prohibit the approval of a request for an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license. If a factor exists that requires the Commission to deny an application for a regular license, it serves no purpose to issue an interim license to that same individual. The interim gambling license is meant to bridge the gap to a regular license.

- Subsection (e) would apply three criteria to the processing of a request for an interim gambling license. First, in the unlikely event that a regular license is issued before the interim license, the request for an interim license would be deemed withdrawn. Second, if an applicant withdraws an application for a regular gambling license before the Bureau's recommendation is made, the request for an interim license would also be deemed withdrawn. Finally, the denial or cancellation of a request for an interim gambling license would not affect the continued processing of the regular license application.

These rules are necessary for the orderly processing of two concurrent license applications. For example, if an application for a regular license is withdrawn, it serves no purpose in going forward with the processing of the corresponding request for an interim license.

- Subsection (f) would apply the following conditions to the issuance of an interim gambling license:
 - (1) An interim gambling license would be invalidated upon issuance or denial of the corresponding regular license.
 - (2) The term of an interim gambling license would be determined by the Commission and based in part on the time necessary to process and consider the application for a regular gambling license.
 - (3) The issuance of an interim gambling license would not obligate the Commission to grant the regular license. Issuance of a regular license would be subject to specified criteria.
 - (4) The issuance of an interim gambling license would not create a vested right to a regular gambling license or an extension of the interim license.
 - (5) The issuance of an interim gambling license would not change the qualification requirements for a regular license.
 - (6) The holder of an interim gambling license would be required to notify the Commission within 30 days of hiring a new key employee or specified contractor.

⁷ Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j, subdivision (a), paragraph (1)

- (7) The authorization of *additional* permanent tables would be prohibited during the term of an interim gambling license.
- (8) The holder of an interim gambling license would be required to pay all the applicable annual fees associated with a regular gambling license.
- (9) The holder of an interim gambling license would be required to comply with the Act and its regulations.
- (10) The proceeds of the gambling enterprise would be required to be held in an escrow account and not disbursed until the Commission approves the ownership transfer and issues a regular gambling license to the new owner(s). The payment of taxes, operating expenses, preexisting obligations, preexisting dependent support and any other distributions approved by the Commission would be exempt from this restriction.
- (11) Allows the Commission to impose additional conditions upon individual applicants for an interim gambling license to address particular factual situations.
- (12) In requesting an interim gambling license, the applicant would agree to the foregoing conditions.

These conditions imposed on an interim gambling license are necessary in order that the license holder understands his or her obligations during the term of the license. The holder of an interim license may be new to the cardroom industry. Knowledge of the applicable provisions of the Act, and that key employees and specific service providers require licensure, is important to the success of the gambling enterprise. These conditions would insure that the holder of an interim gambling license understands that other requirements and factors may apply to the approval of their regular gambling license. These conditions would also insure that the proceeds of the gambling operation are not distributed until the holder of the interim gambling license is qualified for a regular permanent license, as California law prohibits a person from receiving any compensation or reward from the conduct of a controlled game unless that person holds a gambling license.⁸ Finally, these conditions would help to align renewal dates and result in no excessive fees being collected from the holder of an interim gambling license.

- Subsection (g) would require the new owner of a gambling enterprise to provide the Commission with written notification if he or she intends to sell their ownership interest without first obtaining an interim or regular gambling license.

This subsection is meant to accommodate a new owner who might wish to sell their ownership interest rather than own and operate a gambling enterprise. Since gambling license requirements would apply to those that purchase that ownership interest, it is important that the Commission be immediately advised of any intent to sell. Commission staff would then be able to help guide the purchaser(s) through the appropriate interim or regular licensing process.

⁸ Business and Professions Code, sections 19850, 19853, subdivision (a), paragraph (1), and 19879, subdivision (a); Penal Code, section 337j, subdivision (a), paragraph (2)

- Subsection (h) would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.⁹

In cases where the Executive Director determines that a person is not qualified to hold a gambling license, this regulation would provide “due process” for the license holder.

- Subsection (i) would insure that the interim gambling license process does not preclude the Commission from issuing temporary licenses, as authorized by Business and Professions Code section 19824(f).

Although this new regulation would authorize the issuance of an interim gambling license, so that gambling operations may continue following specified events, it is necessary and proper that the Commission retain its existing authority and discretion to issue temporary licenses for other reasons.

FACTUAL BASIS:

The Act provides for the licensure of specified individuals and businesses involved in gambling activities, and for the regulation of those activities, by the Commission. One of the provisions of the Act requires the *owner* of a gambling enterprise to be licensed.¹⁰ If the owner is a *natural person*, then that person must hold a state gambling license.¹¹ If the owner is not a natural person, such as in the case of a *corporation*, the Act requires that specified *persons* within that corporation also be licensed.¹²

The objective of these licensing requirements is to insure that a gambling enterprise is operated by persons of good character and integrity, whose operations are free from criminal or corruptive elements, where games are conducted fairly, honestly, and are not inimical to public health, safety or welfare.¹³ Toward this end, the Bureau conducts an extensive background investigation on those persons and businesses applying for a gambling license. These investigations can understandably take time to conduct. Existing regulations allow for one year from the date an application is received to the issuance or denial of a license by the Commission.¹⁴

Recent Commission data show that over 38% of the licensed gambling establishments (cardrooms) in California have only one natural person licensed as an owner-licensee. The Act prohibits a person from conducting gambling operations without first obtaining a gambling license.¹⁵ As a result, in the event of the death of an owner-licensee, a gambling enterprise may not be able to lawfully operate because the successor in ownership for the gambling enterprise is

⁹ California Code of Regulations, Title 4, Section 12050, subsection (b)

¹⁰ Business and Professions Code, section 19851, subdivision (a)

¹¹ Business and Professions Code, section 19850

¹² Business and Professions Code, section 19852, subdivision (a)

¹³ Business and Professions Code, sections 19801, subdivisions (g) and (h), 19823, subdivision (a), and 19857

¹⁴ California Code of Regulations, Title 4, Section 12342, subsection (b)

¹⁵ Business and Professions Code, sections 19850 and 19855

not licensed with the Commission. The cardroom could be required to close because the regular licensing process for the new owner could take up to one year; putting employees out of work and reducing the value of the gambling enterprise's assets.

Underlying Data:

None.

REQUIRED DETERMINATIONS:

Business Impact:

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This regulation merely formalizes and codifies activities and processes that are already being performed. Chapter 233, Statutes of 2009 (AB 293, Mendoza) mandated the adoption of this regulation. As a result, this proposed action does not impose any new requirement upon or require any additional action by any business. There are no reporting or recordkeeping requirements mandated, nor are there any performance standards imposed, or technologies or equipment specified. Furthermore, no new or additional specific actions or procedures are prescribed.

Specific Technologies or Equipment:

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

No reasonable alternative has been considered or otherwise identified and brought to the attention of the Commission.